

**Date:** November 18, 2011

**To:** Delaware Justice Reinvestment Task Force

**Subject:** Pretrial Recommendations

**From:** Vera Institute of Justice, Center on Sentencing and Corrections

---

The purpose of this memorandum is to provide background information to the Delaware Justice Reinvestment Task Force in preparation for its meeting on November 21<sup>st</sup> at which it will discuss recommendations to improve the pretrial release process and reduce the detention population.

- Part I summarizes the progress of the Delaware Justice Reinvestment Initiative.
- Part II presents a summary of data analysis relating to the pretrial release decision and detention population.
- Part III describes potential areas for reform to the pretrial release process.
- The appendix includes all relevant analyses completed (previously presented as well as new analysis) relating to the pretrial release decision and detention population.

## **I. JUSTICE REINVESTMENT INITIATIVE UPDATE**

Since August 2011, the Vera Institute of Justice has been providing technical assistance to the Delaware Justice Reinvestment Task Force to analyze criminal justice data, determine drivers of Delaware's corrections population, and help craft responsive policy options. The goal is to reduce the corrections population and reinvest savings in evidence-based practices to reduce recidivism.<sup>1</sup>

Vera's analytical approach has been guided by the "iron law of prison populations,"<sup>2</sup> which states that the size of a prison population is determined by two factors: (1) *how many people go to prison* and (2) *how long they stay*. Therefore, "prison populations change when either the number of people going to prison changes, their length-of-stay (LOS) changes, or (for the most dramatic and immediate effect) both. Intake and LOS are the levers of prison populations."<sup>3</sup>

While the mathematics of corrections populations may be simple, the question of how to change course is more complicated. A range of laws, policies, practices, programs, and funding of

---

<sup>1</sup> Suggested strategies for reinvesting in evidence-based practices in community corrections have been addressed in the memorandum *Delaware Community Corrections Assessment*, and will be combined with more recent analysis (i.e., focus groups of level IV facility staff and stakeholder interviews of problemsolving court staff) in a memorandum for discussion at a future meeting.

<sup>2</sup> Todd R. Clear and James Austin, "Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations," *Harvard Law and Policy Review* 3, no. 2 (2009): 307-324.

<sup>3</sup> Todd R. Clear and Dennis Schrantz, "Strategies for Reducing Prison Populations," *The Prison Journal* Supplement to 91, no. 3 (2011): 138S-159S.

multiple agencies are at play. Vera's analysis is designed to reveal the primary drivers of Delaware's population so that the Task Force can craft relevant and responsive policies. Because of the range of factors at play, a package of policy options is most likely to have the greatest impact.

To understand the levers of Delaware's unified system, we have undertaken analyses of intakes and length of stay on both the detention and sentenced populations. We have completed analysis for the detained population, describing detention *intakes, releases* and a *snapshot* of the detained population on a given day. We examine the populations by type of charge and method of release. For the detention release population we also assess *length of stay*. We summarize these analyses below, with a more comprehensive description including charts and tables in the Appendix.

The meeting on November 21<sup>st</sup> will focus on the pretrial population for two reasons. First, based on publicly available data and stakeholder interviews, this is a fruitful avenue of inquiry. Second, pretrial data files were the first ones made available to Vera research staff; data on the sentenced population and court data was received more recently and although analysis is underway, it is not yet completed.

## II SUMMARY OF DATA ANALYSIS

The pretrial release process in Delaware significantly impacts the prison population and the use of state resources. Compared to other states with unified correctional systems, Delaware has more individuals detained awaiting disposition as a proportion of the confined population.<sup>4</sup> Some important characteristics of this population are as follows:

- Most detention admissions are not for violent offenses: 76 percent of detention admissions were not associated with charges for a violent felony.<sup>5</sup> Detaining these individuals consumed significant resources.<sup>6</sup>
- Stakeholders shared their belief that many of those who were detained on non-violent charges would have considerable *capias* histories. In other words, those who were detained repeatedly failed to appear for court hearing or pay fines or fees. However, the data showed that 62 percent of admissions had zero *capiases*, and a large number—64 percent—had fewer than three *capiases*.<sup>7</sup>
- Vera also examined admissions where the lead charge is a violation of parole or probation (VOP). A large number of admissions to detention—19 percent—carried this lead charge.<sup>8</sup> Detention of probation violators is costly. Analysis of length of stay and bed

---

<sup>4</sup> See Chart 1.

<sup>5</sup> See Chart 4. There were 4,340 admissions in 2010 that were not associated with violent felony charges. Violent felonies are defined by Delaware Code Title 11, §4201.

<sup>6</sup> In 2010 there were 13,384 detention releases that did not include any violent felony charges, with an average length of stay of 17 days. This accounts for 227,528 bed days, or approximately 623 beds.

<sup>7</sup> See Chart 5.

<sup>8</sup> A lead charge of violation of probation or parole accounts for 3,359 admissions.

space showed that the offense category of “obstruction” (over half of which is the charge for VOP) consumes substantial resources.<sup>9</sup>

In response to these findings, the strategies below were formulated with the goals of the bail process in mind. Delaware can release more individuals, while ensuring public safety and the integrity of the justice system. Rather than detaining non-violent individuals without significant capias histories, Delaware can target these individuals for release, thereby reducing the detention population. Importantly, pretrial release need not be limited to those charged with non-violent offenses. Research shows that assessing a defendant’s risk—which is not simply a function of the seriousness of the instant charge—can help ensure that the community remains safe and that that detention is reserved for high-risk offenders.

## **II. POTENTIAL AREAS FOR REFORMS TO THE PRETRIAL PROCESS**

The recommendations listed below are informed by stakeholder interviews, policy and statutory review, data analysis, and a review of best practices in the field. This section discusses strategies to *reduce the number of detention intakes*. We will endeavor to identify strategies to reduce the detainee length of stay once we have completed the analysis of court data, which will shed light on bail amounts and court processing time.

### ***Reserve detention for high-risk defendants***

- Delaware’s detention population in 2010 comprised 23% of the total prison population, on average. In comparable states, the 2010 detention population averaged 16% in Vermont, 18% in Connecticut, and 20% in Rhode Island<sup>10</sup>.
- In 2010, 76% of detention admissions were individuals with no violent felonies.<sup>11</sup> Examining capias history, 64% of those admitted to detention in 2010 had less than 3 capias,<sup>12</sup> and 62% of the detention admissions had no capias history.<sup>13</sup>
- Taken together, these data show that 45% of the detention admissions in 2010 (7,987 admissions) had no capias history and were detained on charges other than violent felonies. Considering capias only in the past three years, that percentage increases to 48%, or 8,520 admissions.<sup>14</sup>
- Strategies for how to reserve the use of detention beds for higher-risk defendants appear below.

### ***Implement a pretrial risk assessment instrument***

- Pretrial release should be based on a defendant’s risk of flight and danger to the community rather than his or her financial means. The use of an objective pretrial risk

---

<sup>9</sup> See Chart 18.

<sup>10</sup> See Chart 1.

<sup>11</sup> See Chart 4.

<sup>12</sup> This includes capias for failure to pay, failure to appear, and other capias. See Chart 5.

<sup>13</sup> See Chart 5. Specifically, the detention admission records were not associated with any warrants or capias.

<sup>14</sup> See Chart 9.

assessment instrument will help Delaware move toward a risk-based detention system – one that would detain those individuals who pose the highest risk to public safety, while releasing those who pose a lower risk. A pretrial risk assessment would measure the defendant’s likelihood of failure to appear in court and his or her danger to the community if released. It should be administered within hours of arrest and in advance of the initial appearance before the magistrate of the Justice of the Peace Courts, so that the magistrate has all relevant information for the initial release decision.

- In Delaware, magistrates make bail and release decisions based on current charge, criminal history, a summary of past warrants and capiases for failure to pay and failure to appear, information provided by law enforcement, and answers solicited from the defendant during the bail hearing.
- Delaware law favors release on recognizance or on unsecured bail. Secured bail is permitted when necessary to assure the appearance of the accused at the next scheduled court date and to protect the safety of the victim and community. A recent policy directive of the Justice of the Peace Courts indicates that magistrates should consider unsecured bail, paired with conditions that are reasonable for a defendant to attain or supervision, rather than secured bail with few or no conditions.
- A pretrial risk assessment instrument would provide additional, actuarial information to help magistrates objectively determine which defendants are more likely or not to endanger public safety and appear in court. An assessment tool would help magistrates base the release decision on public safety rather than on an individual’s ability to post bond.

### ***Provide magistrates with data on appearance and re-arrest***

- Magistrates would benefit from reviewing long-term failure-to-appear (FTA) and re-arrest rates for the court as a whole and for their own specific decisions to better understand the impact of those decisions. In addition, it would be helpful for magistrates to have information on the capacity and effectiveness of pretrial supervision to make best use of the resources available to defendants.
- Currently, magistrates are able to view the history of warrants and capiases for failures to appear and failures to pay, but they cannot view the appearance rate. Release decisions will be enhanced if magistrates have a complete picture.
- Both magistrates and law enforcement officers perceive that those released on bail are often re-arrested. Having better information about re-arrest rates will help magistrates ensure that releases do not sacrifice public safety and that decisions are based on data rather than perception.

### ***Increase pretrial supervision capacity***

- JPC policy encourages magistrates to release defendants with the least restrictive conditions necessary to assure that the accused will appear for scheduled court proceedings and that he or she will not threaten community safety. Magistrates take an individualized approach to each defendant, considering the risks posed by each defendant.
- To fully realize the idea of the individualized approach, magistrates need access to a full menu of release options, including GPS and electronic monitoring, regular and randomized drug testing, drug or alcohol assessment or treatment, regular reporting,

supervision by officers in a range of intensities, and other conditions, such as refraining from contact from persons or locations, residency and employment requirements, and refraining from possessing firearms or using drugs.

- Perhaps most importantly, community supervision must be adequately resourced and staffed to meet these needs. At a minimum, this will require closer coordination between the JPC and the Department of Correction. In addition, this may require additional DOC staff, staff training for DOC pretrial supervision officers, and judicial training on available supervision options. Another option would be to engage community partners to expand capacity for one or more of these release options.

### ***Support alternatives to pretrial detention***

- Delaware's ***problemsolving courts*** provide valuable resources for addressing the needs of targeted populations. These specialized dockets target the needs of individuals with mental illness and substance abuse issues, for example, consistent with evidence-based principles. In some cases, these courts provide true alternatives to incarceration. However, court-based programs are financially supported by existing agency and federal funds, endangering their sustainability. Further, the courts' status as programs created by agency fiat, rather than established by statute, may contribute to the lack of staff support and inability to hire permanent staff, especially in these uncertain economic times. Supporting the operations of these courts would help ensure that policymakers and stakeholders understand the impact of the specialized courts. Most immediately, the need is to increase capacity to measure outcomes on an individual and program level. If they prove to be cost-effective alternatives to pretrial detention, policymakers should explore the option of reinvesting savings in these courts, thereby enhancing their sustainability.
- ***Increased use of criminal summons*** could help reduce the number of detention intakes. By law and by department policy, police officers have the authority to issue citations in the field, in lieu of arrest and booking. Based on conversations with law enforcement leaders, this authority is not utilized as often as it might be. Similar to the cite and release pilot program in New Castle, Delaware, select law enforcement agencies could increase the use of this authority to reduce detention admissions. Further inquiry would be required to determine appropriate target populations for this effort.

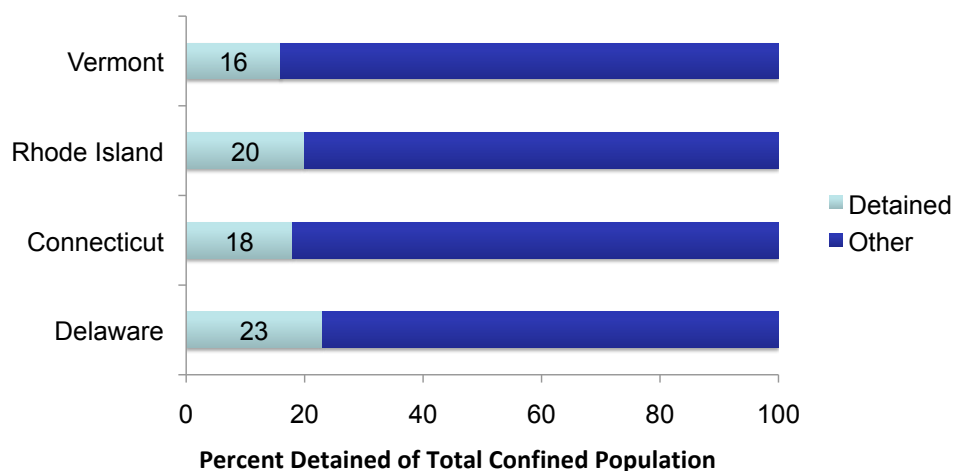
## APPENDIX A: QUANTITATIVE ANALYSIS OF DETENTION POPULATION

This appendix summarizes the analysis of Delaware’s detained population. The source for this information is 2010 DELJIS data, unless otherwise noted. All findings are preliminary.

### I. General Information

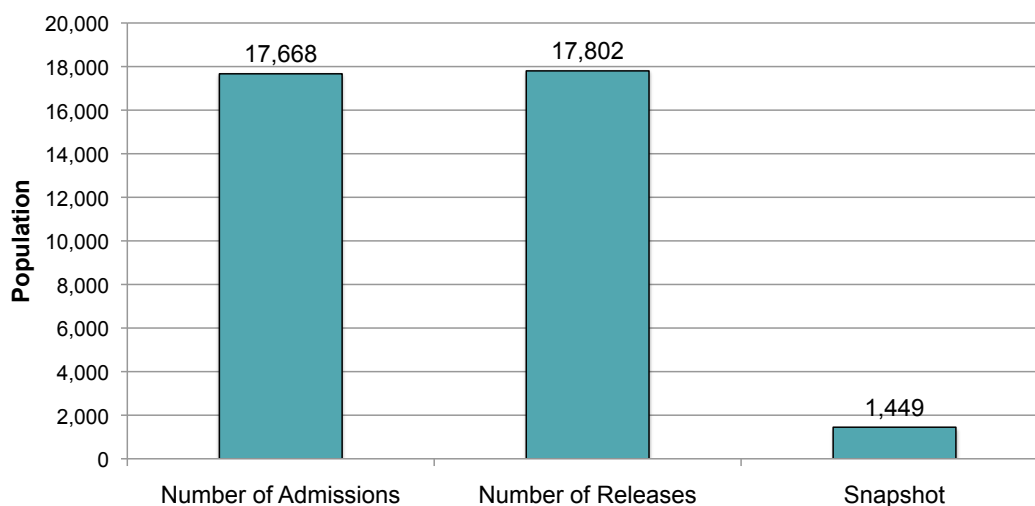
**Chart 1** examines Delaware and four other states with unified corrections systems and available data. It shows the percent of each state’s population that is detained.

**Chart 1. Detained/Confined Population for Four States with Unified Correctional Systems<sup>15</sup>**



**Chart 2** shows the total number of admissions to and releases from detention in 2010. These are counts of each occurrence of an admission or release, not counts of the number of people admitted or released (the same person may be admitted more than one time in the same year). The chart also shows a “snapshot” of the number of people held in detention on 12/31/09.

**Chart 2. 2010 Detention Population**

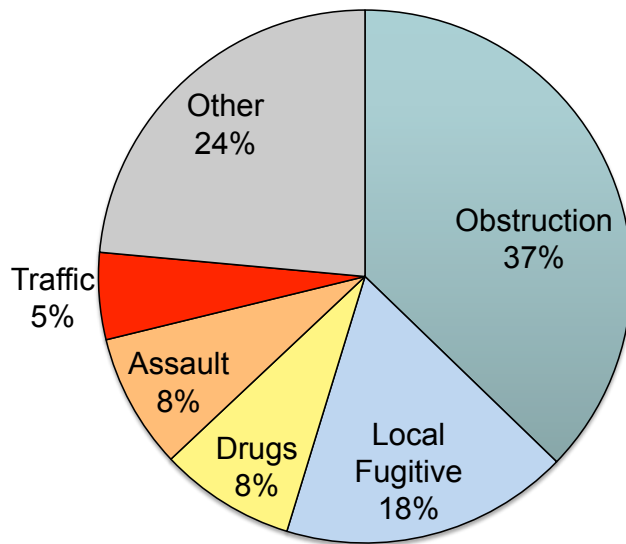


<sup>15</sup> Sources: Conn. DOC Monthly Indicators Reports (2010); Del. DOC Populations Patterns 2000 to Dec. 2010; R.I. DOC Population Report FY 2010; Vt. DOC Facts and Figures FY 2010.

## II. Detention Admissions

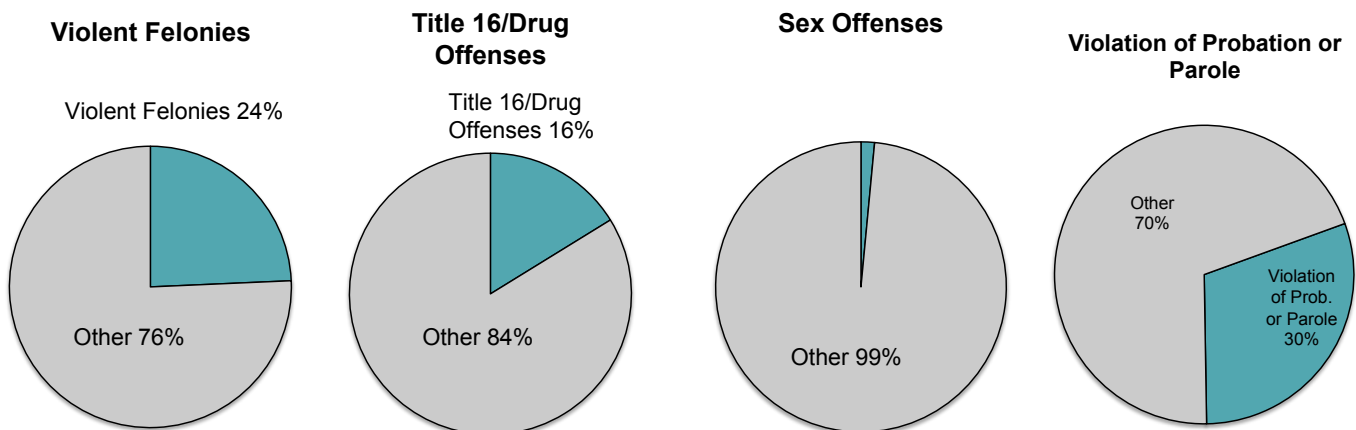
Focusing on 2010 admissions to detention, **Chart 3** displays the six lead charge categories that accounted for over three-quarters of admissions. Obstruction, the largest category, is composed primarily of violation of probation and civil contempt charges. Local fugitive, the next largest category, is composed primarily of Capias charges. The “Other” category is composed of several different offenses, none of which accounts for more than 3.5% of admissions.

**Chart 3. 2010 Detention Admissions: Lead Charge** (defined by DELJIS)



**Chart 4** includes *all* charges associated with each admission, not only the lead charge. These charts show the percentage of admissions that include charges for violent felonies, Title 16 drug offenses, sex offenses, and violations of probation or parole.

**Chart 4. 2010 Detention Admissions: All Charges**

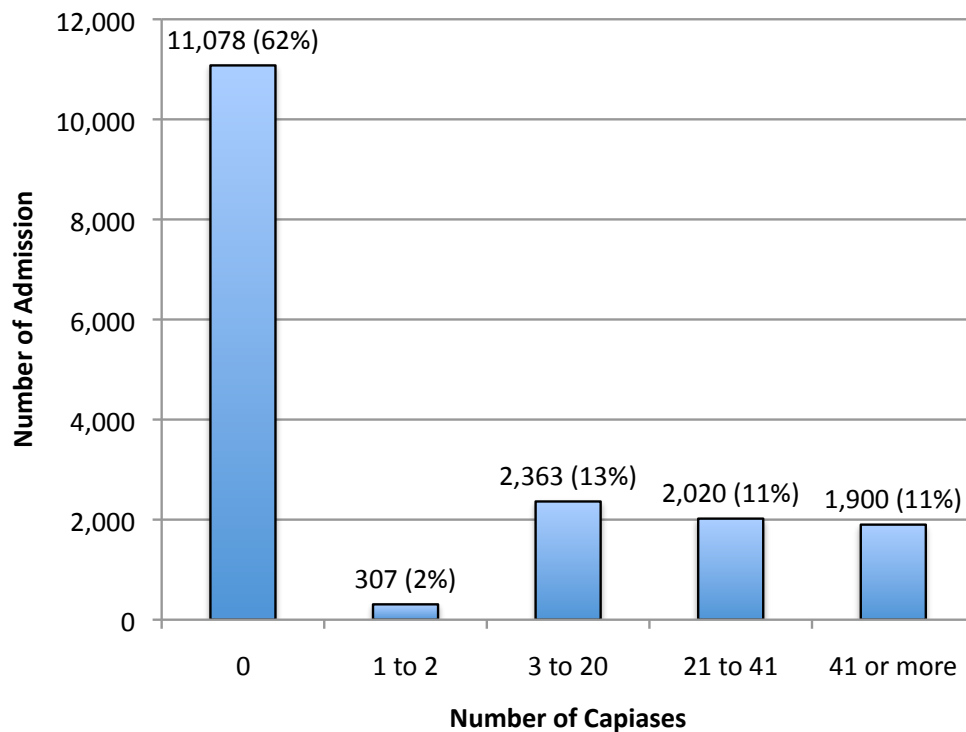


The next several figures examine the capias history of detention admissions. We focus on four categories of Capiases. Total capias are capias of any kind, while the other three categories are failure to appear (FTA), failure to pay (FTP), and “other” capias. This other category includes capias that could not be otherwise categorized. **Table 1** shows the average, minimum, and maximum number of capias among 2010 detention admissions. **Charts 5** and **6** break down the number of total capias and the number of FTA Capiases into smaller categories. Notably, over 60% of admissions had zero capias.

**Table 1. Average Number of Capiases Prior to Admission Among 2010 Detention Admissions**

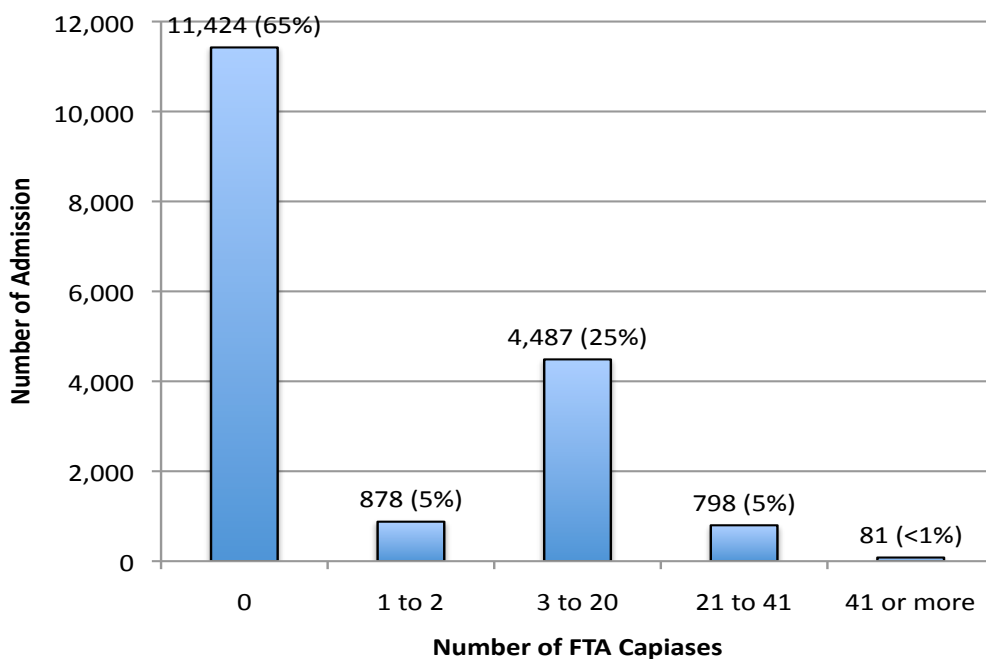
	Total Capiases	Failure to Appear	Failure to Pay	Other/ Unknown
Average	11.7	4.0	5.6	2.3
Min	0	0	0	0
Max	195	86	138	57

**Chart 5. Number of Total Capiases**



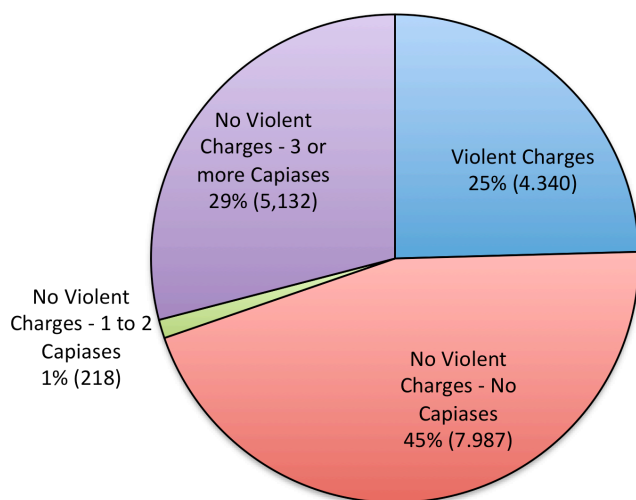


**Chart 6. Number of FTA Capiases Prior to Admission Among 2010 Detention Admissions**

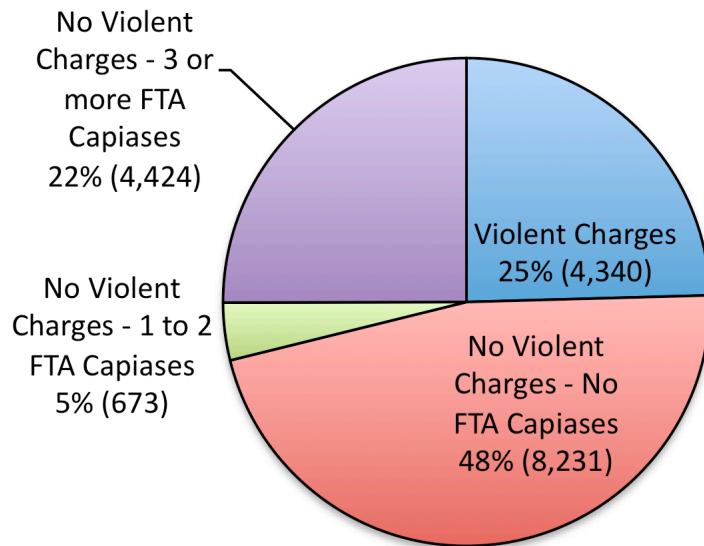


The next three charts (7 through 9) examine the number of Total and FTA capiases for detention admissions with and without violent felony charges. **Chart 7** considers Total Capiases and **Chart 8** focuses on FTA capiases. **Chart 9** narrows the focus to only those capiases in the three years prior to the date of admission.

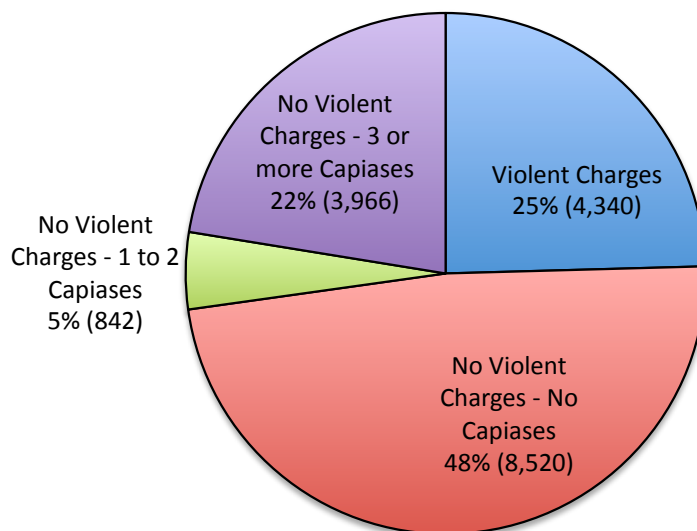
**Chart 7. 2010 Detention Admissions: Violent Felonies and Total Capiases Prior to Admission**



**Chart 8. 2010 Detention Admissions: Violent Felonies and FTA Capiases Prior to Admission**



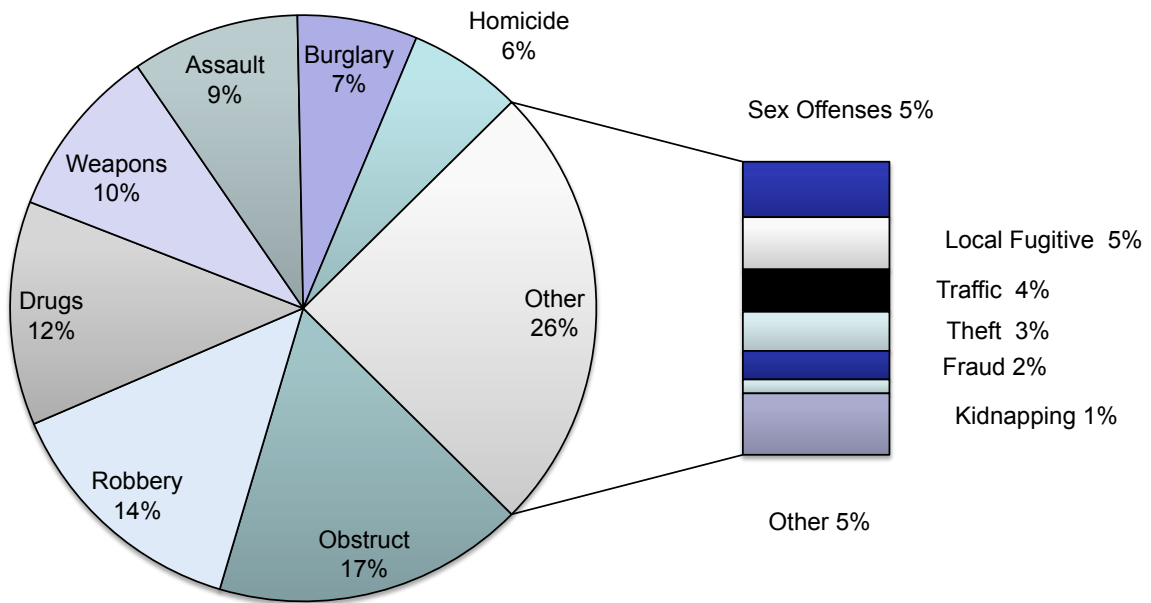
**Chart 9. 2010 Detention Admissions: Violent Felonies and Total Capiases in Three Years Prior to Admission**



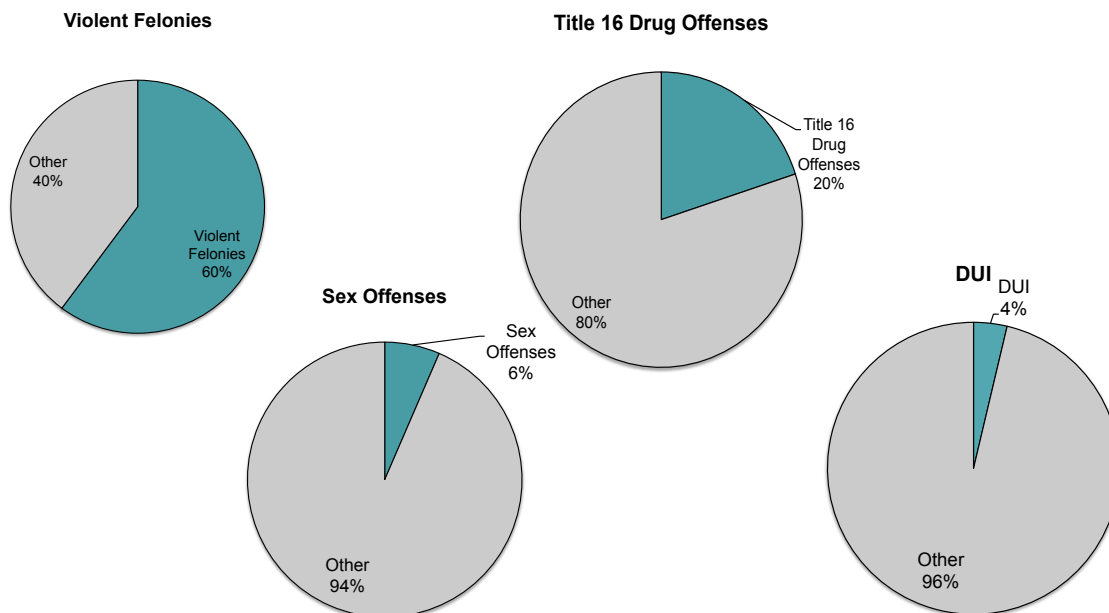
### III. Detention Snapshot

The next set of figures examines the “snapshot” population—the number of offenders held in detention on a given day. **Chart 10** examines categories of lead charge, while **Charts 11** examine *all charges* associated with a detention stay for the presence of certain categories of charges of interest (Violent Felony, Title 16, Sex Offense, DUI, and VOP).

**Chart 10. 2010 Detention Snapshot: Lead Charge** (Defined by DELJIS)

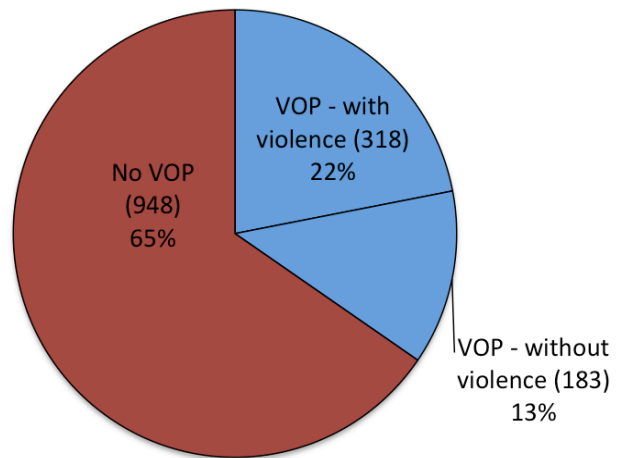


**Chart 11. 2010 Detention Snapshot: All Charges**



**Chart 12** focuses in particular on VOP charges among offenders with and without Violent Felony Charges.

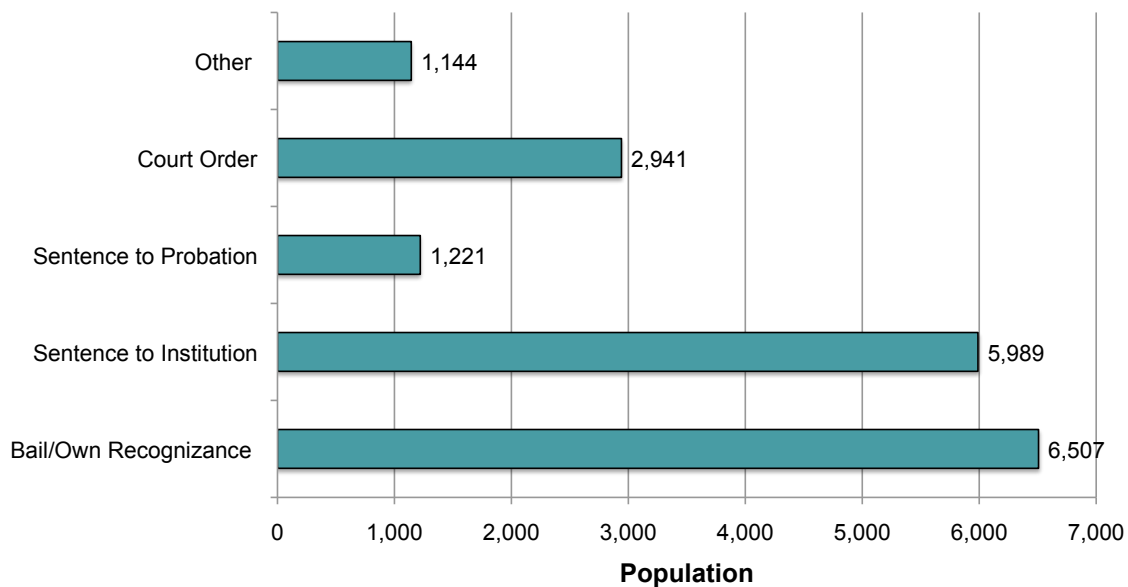
**Chart 12. 2010 Detention Snapshot: All Charges - VOP**



#### IV. Detention Releases

The remaining figures examine the approximately 17,000 detention releases in 2010. **Chart 12** examines the major categories for “Type of Release”. This can be release to a sentenced state (for example to probation or an institution) or released before a case has been resolved (for example on bail or own recognizance). Court Order is a mixed category that includes cases closed without a conviction (for example those that are nolle prossed) as well as some who make bail or are released on recognizance. The data do not allow us to separate these categories. The Other category includes releases to another state or federal authority or by the order of the parole board.

**Chart 13. 2010 Detention Releases: Type of Release**

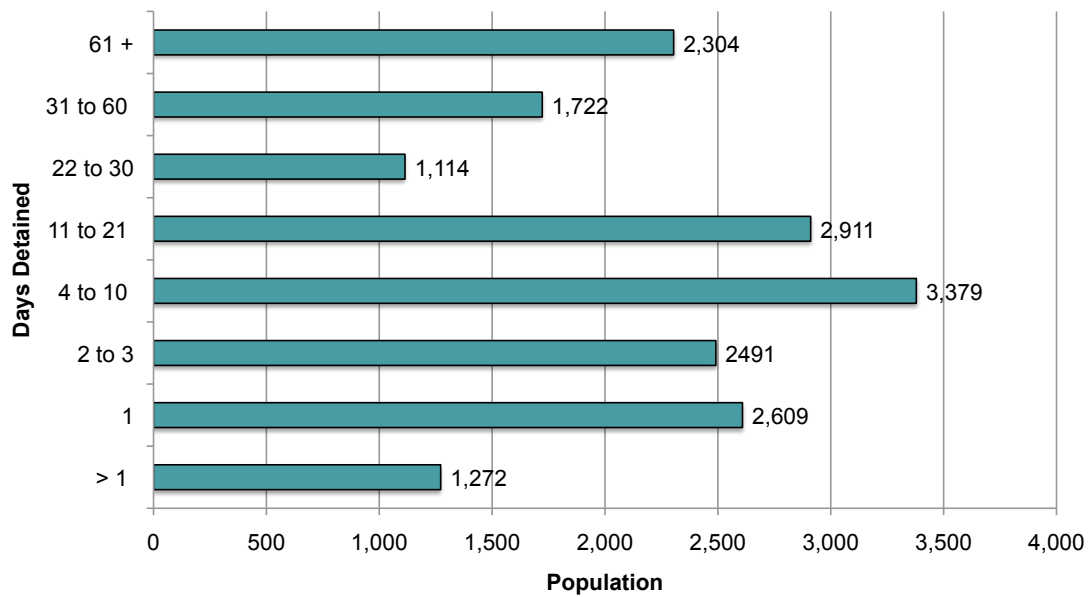


The next several figures examine length of stay for detention releases. **Table 2** displays average length of stay for the entire group released, while **Charts 14** through **17** break down length of stay into several categories.

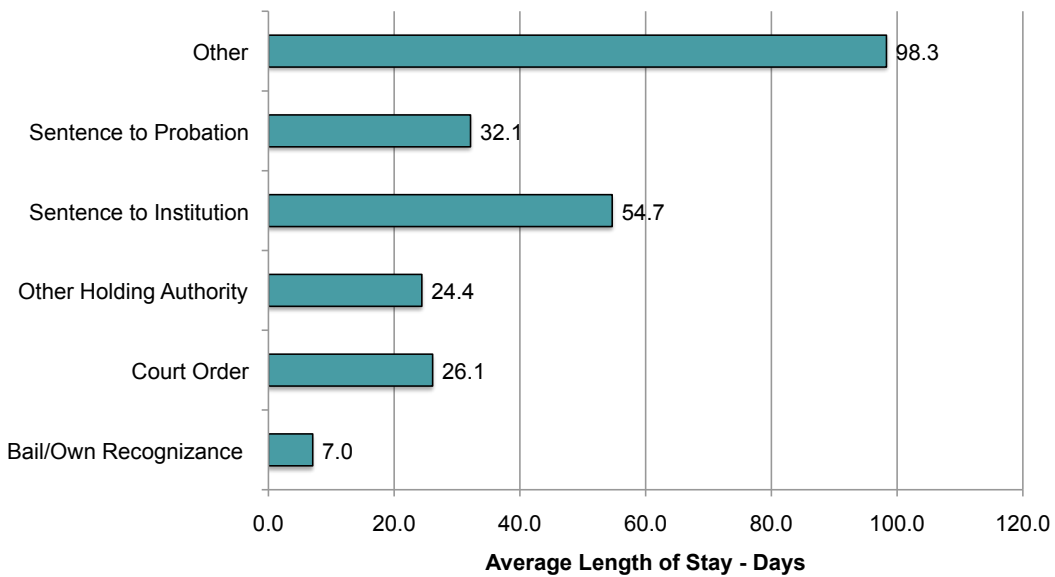
**Table 2. 2010 Detention Releases: Length of Stay**

	Length of Stay
Average	30 days
Mode (most frequent)	1 day
Median	8 days

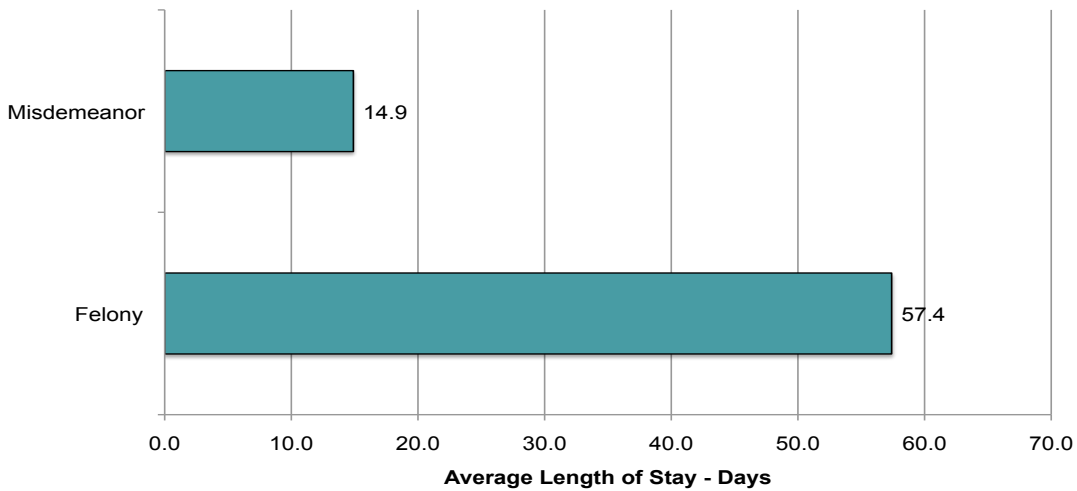
**Chart 14. 2010 Detention Releases: Length of Stay**



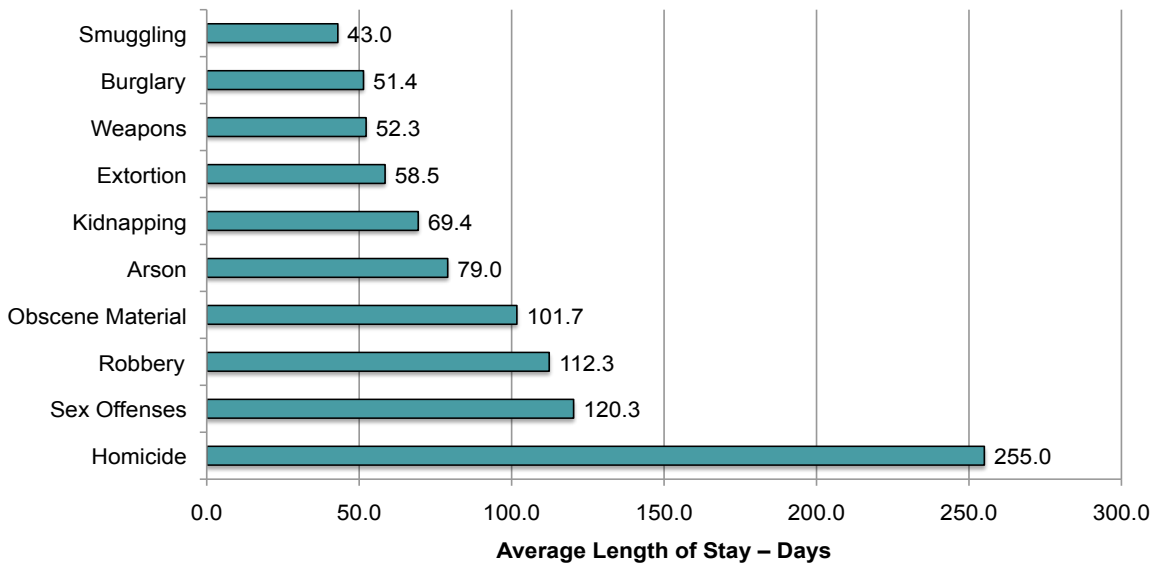
**Chart 15. 2010 Detention Releases: Average Length of Stay by Type of Release**



**Chart 16. 2010 Detention Releases: Average Length of Stay by Category of Lead Charge**

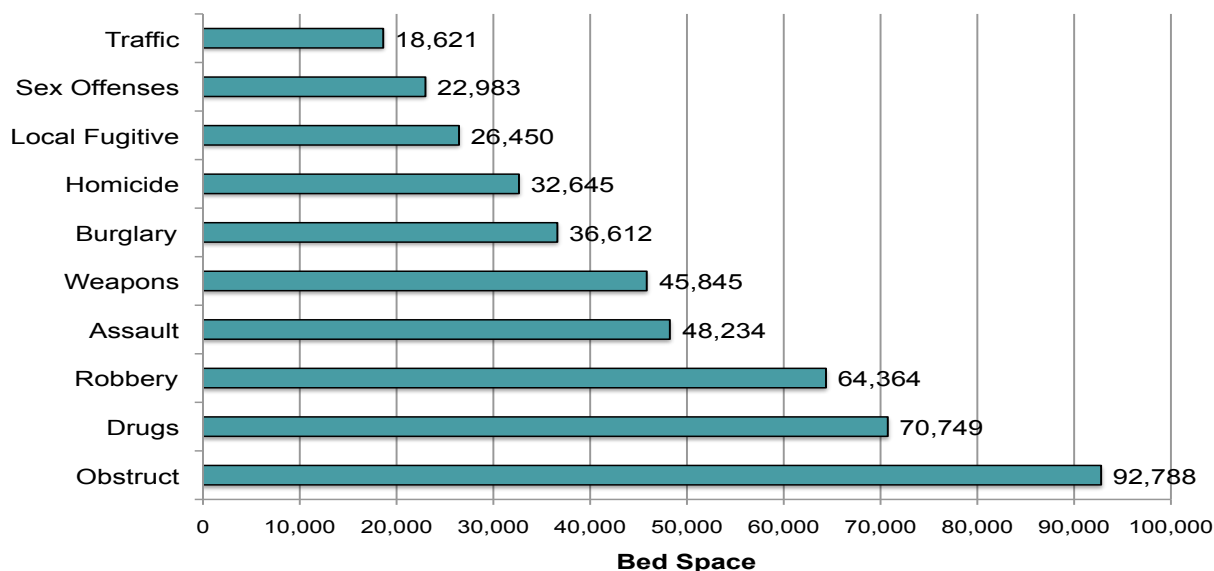


**Chart 17. Average Length of Stay by Type of Lead Charge (10 longest stays)**



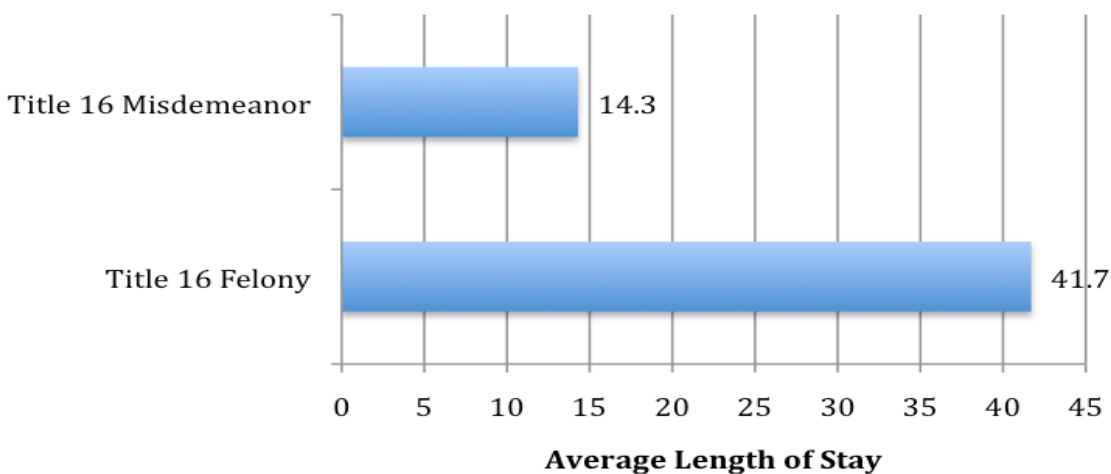
In addition to length of stay, it is important to examine bed space occupied, as an approximation of resources used. Bed space is calculated by multiplying the number of offenders by the average length of stay. **Chart 18** shows Bed Space by Type of Lead Charge for the 10 largest categories.

**Chart 18. 2010 Detention Releases: Bed Space by Type of Lead Charge (10 largest)**



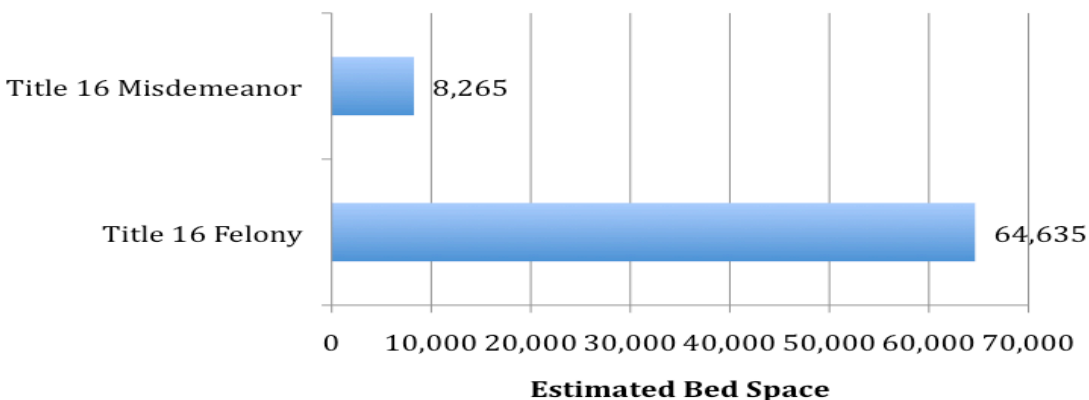
**Charts 19 and 20** examine length of stay and bed space for Title 16 charges. We previously presented analysis of Title 16 charges based on statute description. In response to feedback, we divided Title 16 charges into violent and felony categories, shown in **Chart 19**.

**Chart 19. 2010 Detention Releases: Average Length of Stay for Title 16 Charges**





**Chart 20. 2010 Detention Releases: Estimated Bed Space for Title 16 Charges**



Also in response to a request, **Chart 21** examines only detention releases who had a length of stay of three days or less. It identifies the five largest offense categories in this group, broken down by felony/misdemeanor.

**Chart 21. 2010 Detention Releases Held for Three Days or Less: Five Largest Lead Charge Categories**

